

## National Historic Preservation Act (NHPA) - Section 106

### ***Requires consideration of the effects of Federal undertakings on Historic Properties.***

Historic Property: cultural resource eligible to the National Register of Historic Places

Eligibility Criteria:

1. Associated with a significant event, includes traditional cultural values.
2. Associated with a significant person.
3. Representative of a type, period or method of construction; work of a master; or has high artistic values.
4. Has yielded or may be likely to yield important information on history or prehistory.

## National Environmental Policy Act (NDPA)

### ***Requires consideration of whether or not the project will have significant effects on the quality of the human environment.***

Intent is to avoid environmental degradation, preserve historic, cultural, and natural resources, and promote the widest range of beneficial uses of the environment without undesirable and unintentional consequences. *We use our NHPA compliance information to address NEPA cultural resource issues.*

## The Section 106 Process in Highway Projects

1. Is it an undertaking?

Does this type of project have potential to cause effects? *Decision made and documented by Cultural Resource Section (CRS).*

2. If Yes...we need to identify historic properties that may be affected by the project.

- a. CRS consults with the State Historic Preservation Office (SHPO) on the area of potential effect and the level of effort necessary to identify cultural resources.

- b. Identification of cultural resources undertaken through a variety of means.

- i. If no cultural resources CRS requests SHPO concurrence with a No Historic Properties Affected determination. Section 106 is completed with SHPO concurrence.

- ii. If cultural resources identified...

- (1) CRS consults with SHPO and tribes on needed evaluative efforts.

- (2) Evaluative efforts are undertaken.

- (3) CRS consults with SHPO and tribes on eligibility.

- (a) If not eligible CRS requests SHPO concurrence with a No Historic Properties Affected determination. Section 106 is completed with SHPO concurrence.

- (b) If eligible...

- (i) Assess adverse effects

- 1) If project changed to avoid effects, CRS consults with SHPO on a No Adverse Effect determination. If SHPO concurs, Section 106 is completed.
- 2) If adverse effects CRS works with FHWA, SHPO, tribes, and others to resolve adverse effects. CRS sends notification of adverse effect to FHWA and writes an MOA which consulting parties sign. Section 106 is completed.

## NDDOT Section 106 Compliance Procedures for Material Source Location

All state-optioned, state-owned, and contractor located material sources are subject to Section 106. If your project will take borrow from the backslopes within existing rights-of-way the project is subject to Section 106.

Section 106 is normally completed for state-optioned or owned material sources prior to their being listed in our plans. The material source location subject to Section 106 needs to include the access road, the staging area, the stockpile areas, and the material extraction area.

Contractor located material sources:

Contractor call Bob Christensen, 328-4539, CRS, to give him a project location. He reviews the existing database on material source locations to see if Section 106 has already been completed for the location. If it has not, the following applies:

1. Private archaeological firm is hired by the contractor to complete a Class III cultural resource inventory.
2. Archaeological firm sends reports on the inventory to the CRS.
3. CRS reviews and, if acceptable, forwards to SHPO with an effects determination.
4. If there are no cultural resources identified and SHPO concurs in No Historic Properties Affected determination then Section 106 has been completed.
5. If cultural resources are identified in the material source location, they need to be evaluated, and, if significant, effects assessed and mitigated. This portion of the process includes consultation with the SHPO and Native American tribes.

To expedite the Section 106 process for contractor located material sources, if there were no cultural resources identified during the Class III inventory by a permitted archaeological firm:

- A map of the area surveyed is faxed to the CRS.
- A phone call from the archaeologist to the CRS to discuss the inventory and results is made.
- A phone call is then made from the CRS to the contractor giving him approval to begin extraction activities.
- A letter discussing the inventory and results and giving approval to proceed with extraction activities is sent from CRS to the contractor, the appropriate NDDOT District personnel, and the appropriate NDDOT Division personnel with the map of the location that was inventoried.
- This is followed by the completion of Section 106 as outlined previously.

## Cultural Resource Section Involvement in Local Government Projects

Typically, projects that are entirely within the construction footprint of the existing roadway will not be considered undertakings, unless there is the potential to impact intact buried sites, or an historic district. If previously undisturbed ground will be impacted or there will be work outside the existing curb, such as sidewalks being redone, and the project will be Federally funded, the project will be considered an undertaking.

The Cultural Resource Section will consult with SHPO and the Tribes on your projects and will provide guidance to you on navigating through the Section 106 process.

Steps\*:

1. Submit SFN 52748 (available online at <http://www.state.nd.us/dot/docs/sfn52748.pdf>) to Bob Christensen (328-4539) CRS, Design Division, NDDOT. He will:
  - a. Review the submitted information.
  - b. Forward the information to SHPO and recommend Class III inventory or No Historic Properties Affected.
2. If SHPO concurs
  - a. No Historic Properties Affected and Section 106 has been concluded.
  - b. Class III inventory needed.
    - i. Archaeological firm hired by City/County/Engineering Firm.
    - ii. Archaeological firm sends reports on the inventory to the CRS.
    - iii. CRS reviews and, if acceptable, forwards to SHPO with an effects determination.
    - iv. If there are no cultural resources identified and SHPO concurs in No Historic Properties Affected determination then Section 106 has been completed.
    - v. If cultural resources are identified they need to be evaluated, and, if significant, effects assessed and mitigated. This portion of the process includes consultation with the SHPO and Native American tribes.

\* Similar process but consultation with THPO or Tribe in place of SHPO if project is on a reservation.

**NDDOT Project Information - Cultural Resources**

North Dakota Department of Transportation, Design  
SFN 52748 (2-2001)

**This information is necessary to initiate consultation. Add attachments as necessary.**

If you have any questions, please call Cultural Resources at 701-328-4539

Engineering Firm	Project Engineer	Phone Number	
Address	City	State	Zip Code
NDDOT Project Number		Project Type	
Brief description of Project, including any potential ground disturbance, widening, new ROW, any buildings or structures affected, etc. _____ _____ _____ _____			
<input type="checkbox"/> Attached			
Project purpose and need _____ _____			
<input type="checkbox"/> Attached			
Legal Description of the Area of Potential Effect (project area), including county, township, range, section, and quarter-quarter description: County _____ T _____ N, R _____ W, S. _____, Quarter-quarter _____ T _____ N, R _____ W, S. _____, Quarter-quarter _____ T _____ N, R _____ W, S. _____, Quarter-quarter _____			
<input type="checkbox"/> Additional legal locations attached			
Known Cultural Resources (include any archaeological sites, historic sites, buildings more than 50 years old, etc.). Include the site number (SITS number) and a brief description of each site. Attach a Class I Cultural Resource Inventory (file search): _____ _____ _____ _____			
<input type="checkbox"/> Attached			
A Class III cultural resource inventory (survey) been conducted for this project: If yes, attach copy of the report. <input type="checkbox"/> Yes <input type="checkbox"/> No			
<input type="checkbox"/> Attached			
What is your plan for public involvement? (such as solicitation of views, public input meeting, public hearing, etc.) _____ _____ _____			
<input type="checkbox"/> Attached			
Attach county maps showing the Area of Potential Effect (project location). <input type="checkbox"/> Attached			
Rural projects: Attach 7.5 minute USGS topographic maps showing the specific area of potential effect. Each map sheet must be labeled with the quad map name and the township/range. Include the site boundary for each site as shown on the SITS form. Urban projects: Include a city map showing the boundaries of all historic districts, and the site boundaries of the sites along the project. _____			
<input type="checkbox"/> Attached			